REMARKS

Claims 1, 15-18, and 27 are pending in this application. Claims 1 and 15 are independent. Claims 2-14, 19-26, 28-36, and 38 were previously canceled without prejudice or disclaimer. Claim 37 is canceled without prejudice or disclaimer.

SUMMARY OF THE OFFICE ACTION

The outstanding Office Action is a non-final Action that again acknowledges the claim for foreign priority and the receipt of the priority document as well as again acknowledging that the drawings filed November 30, 1999 have been accepted. In addition, the Information Disclosure Statement filed October 23, 2008, is acknowledged and claims 15-18 are indicated to be allowed.

The outstanding Action further presents a rejection of claim 37 under 35 U.S.C. §101 and a rejection of claims 1, 27, and 37 under 35 U.S.C. §102(e) as being allegedly anticipated by Wilcox et al. (U.S. Patent No. 6,072,542, hereinafter "Wilcox").

CONTINUED FAILURE TO FOLLOW THE MPEP

Even though the last response filed December 3, 2008 pointed out many apparent violations of Patent and Trademark Office (PTO) policy published in the Manual of Patent Examining Procedures (MPEP), the PTO has failed to act to correct or adequately explain any of these apparent violations. Worse still, the present outstanding Action adds to these apparent MPEP violations as there is no indication that the present rejection of claims 1, 27, and 37 under 35 U.S.C. §102(e) as being allegedly anticipated by Wilcox was approved in the manner required by MPEP §1214.04. In this regard, the Technology Center (TC) Director's approval has not been included as to the outstanding Action that cites and applies a new reference to Wilcox in the latest "new" prior art rejection applied to claims 1, 27, and 37, the Board Decision reversing prior art rejections of these claims notwithstanding. Also lacking is any indication of the **personal attention** of the SPE that is required by MPEP §707.02 and that was brought to the attention of the PTO in the above-noted last response (filed December 3, 2008). In this regard, nothing in the outstanding Action evidences any attempt by the SPE to insure that every effort is

being made "to terminate . . . prosecution" and to insure that the Examiner has not performed further prohibited new searches contrary to MPEP §1214.04.

The only response in the outstanding Action to the above-noted violations of the MPEP that were set forth in the response filed December 3, 2008 is set forth by paragraph 1 at page 2 of the outstanding Action. This response merely notes the Examiner's duty to perform an **UPDATE** search before allowance and an allegation contrary to the clear evidence of record that he "never considers such a reversal as a challenge to make a new search to uncover other and better references." The contrary evidence of record is the search history obtained from private PAIR that shows that a full search was conducted on April 26, 2008. A copy of the file wrapper search notes also shows search consultations with other Examiners as recently as February 26, 2009. If the Examiner has only performed updated searches that would only consider references published after the April 26, 2008 search date, how was the Wilcox patent found that bears an issue date of June 6, 2000?

In this last regard, it is well understood that an **UPDATE** search is not a **NEW** search, and it is only supposed to be made as to updating the search from the date of the last search when no amendments are made that require a new search.

The above noted recorded searches further conflict with the requirement of MPEP §1214.04 that the examiner has to possess "specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed" in order to request the "Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection." These search efforts appear to be the likely source for the citation of Sugano, Dorricott, Nakagawa, Koz, Weiss, and Horne in the Action mailed September 16, 2008, not the required "specific knowledge" of MPEP §1214.04.

It is believed that a reasonable SPE aware of his duties under MPEP §707.02 to insure that every effort was being made "to terminate . . . prosecution" would have checked to insure that all requirements of MPEP§1214.04 had been met, particularly the one requiring "specific knowledge of the existence of a particular reference or references" and would further have done something to speed processing as to the amendment filed September 13, 2007.

The new citation of the Wilcox reference is also clearly contrary to any such termination effort and reflects search efforts not made necessary by any amendment to the claims as the last response included no claim amendments. In this regard, it is clear that the SPE has not monitored the actions of the Examiner in any reasonable way or the SPE would have been aware that the cited Wilcox reference is clearly the result of further improper search activities (clearly not mere update searches in view of the date of Wilcox that is noted above) relative to the outstanding Office Action that sets forth yet another new prior art rejection of claims 1, 27, and 37.

As it appears that the Examiner and the SPE have disregarded the obligations placed upon them by the MPEP, a petition to evoke the supervisory authority of the Director to exercise supervisory authority over the Examiner and the SPE to prevent further violations is being filed with this response.

REJECTION OF CLAIM 37 UNDER 35 U.S.C. §101

Item 3 on page 2 of the outstanding Action sets forth the above noted rejection of claim 37 under 35 U.S.C. §101. This rejection is considered to be moot as claim 37 has been canceled.

REJECTION OF CLAIMS 1, 27, AND 37 UNDER 35 U.S.C. §102

Item 5 on page 3 of the outstanding Action sets forth the above noted rejection of claims 1, 27, and 37 under 35 U.S.C. §102(e) as being allegedly anticipated by Wilcox. This rejection is considered to be moot as to canceled claim 37 and is traversed as to claims 1 and 27.

Claim 1 is directed to an information storing apparatus that analyzes frames of image data and generates **a numerical value**, referred to as a "frame feature value," for a plurality of the frames. The apparatus includes a motion vector statistic calculating unit that calculates statistics of motion vectors for the image data. The apparatus further includes a frame feature value generating unit that uses the statistics calculated by calculating unit to generate the **numerical** frame feature value for the plurality of frames. It also includes a frame feature value storing unit that is connected to the frame feature value generating unit that stores the numerical frame feature values. The numerical frame feature values are stored in correlating form with the associated frame of the plurality of frames of image data.

On the other hand, Wilcox is concerned with the states of a Video Segmenting Hidden Markov Model (VSHMM) correspond to the various segments of a video, namely the shots, the portions of the shots where camera motion occurs, and the transitions between shots, including cuts, fades and dissolves. The VSHMM is first trained and then used to identify and classify the temporal partitioning of video sequences into individual segments. The segments involving camera motion are treated at col. 6, lines 3-20 as follows:

> The presence of motion is detected using two motion features computed from the coherence of motion vectors of nine, evenly-distributed blocks in each frame. The first feature is the magnitude of the average of the nine motion vectors. The second feature is the average magnitude of the nine motion vectors. The combination of these two motion features allows the VSHMM to detect pans and zooms. For example, when both motion features have a high value, a pan is indicated. When the first feature is small and the second feature is large, a zoom is indicated. When the second feature is small, no camera motion is indicated. FIG. 3 shows a sample of motion vectors that indicate a pan. In FIG. 3, the magnitude of the average vector is high, for example, 10 pixels, and the average magnitude is 10 pixels.
>
> FIG. 4 shows a sample of motion vectors that indicate a zoom. In FIG. 4, the magnitude of the average vector is zero because opposing vectors cancel. The average magnitude is 9 pixels.

Thus, to whatever extent that Wilcox teaches the use of motion features that involve statistics as to motion vectors to detect **camera** motions, this teaching has nothing to do with the claimed requirement for "calculating statistics of motion vector information related to said **image data**" (emphasis added).

More specifically, Wilcox teaches that in order to detect the presence of **camera** motion, two motion features must be determined and compared (magnitude of the average of the nine motion vectors and average magnitude of the nine motion vectors) to determine if there is a **camera** "pan" or a "zoom" video segment that is detected. To whatever extent that the trained VSHMM can use the statistics as to motion vectors to identify and classify the temporal partitioning of video sequences into individual **camera** "pan" or "zoom" segments, there is no teaching in Wilcox of the claim 1 required "for "calculating statistics of motion vector information **related to said image data**" (emphasis added). Information indicating camera

position is just that, it is not reasonably "related to image data."

Furthermore, claim 1 requires a frame feature value generating unit for generating a frame feature value "**which is numerical information representing quantity of a feature contained in a frame of image data using the calculated statistics**" (emphasis added). This is also not seen to be taught by Wilcox and the outstanding Action does not explain how these specific requirements of claim 1 are taught by Wilcox as to the temporal partitioning of video sequences into individual **camera** "pan" or "zoom" segments and other segments not determined by motion vector statistics calculations. Further, the calculated statistics in Wilcox relate to detecting camera changes occurring over a plurality of frames and have nothing to do with the required generation of a numerical frame feature value as to a "**feature contained in a frame of image data using the calculated statistics**." Instead of providing explanations, the outstanding Action (at the bottom of page 3) simply points to "figure 10, average of motion vectors and/or the variance of the motion vectors, col. 5, ln. 26-35."

What is lacking is any explanation of how figure 10 alone or with the noted "average of motion vectors and/or the variance of the motion vectors," all with or without the teachings of col. 5, lines 26-35 is/are being relied upon to teach the above-noted claim limitations. In this respect, while figure 10 "is a flow chart outlining the process for automatically segmenting a video using the VSHMM" (col. 10, lines 52-53), nothing is taught as to the steps of this flow chart that relate to the required "generating a frame feature value comprising numerical information representing a quantity of a feature contained in a frame of said image data" based on calculated statistics of motion vector information. Also, while col. 5, lines 26-35 teach that the VSHMM will segment a video as to its features, and col. 5, lines 32-35 are specific to teaching "the feature values of the histogram difference feature for a feature movie will be similar to the values of the same feature observed in, for example, a cartoon or a music video," nothing here teaches the claimed "generating a frame feature value comprising **numerical information representing a quantity of a feature contained in a frame of said image data**" based on calculated statistics of motion vector information.

It is well established that the PTO is to indicate exactly where a relied on teaching appears in the relied upon reference. *See In re Rijckaert*, 9 F.3d 1531, 1533, 28 USPQ2d 1955,

1957 (Fed. Cir. 1993). Further note 37 C.F.R. §104(c)(2) that states that "the particular part [of the reference] relied on must be designated as nearly as practicable."

Accordingly, if the PTO is to continue to rely on Wilcox as teaching the claim 1 "frame feature value generating unit," it must specify which element taught by Wilcox corresponds to this claim element. Also, the element taught by Wilcox that is being relied on as corresponding to the claim 1 recited "frame feature value storing unit" must be set forth under the above noted *Rijckaert* decision and 37 C.F.R. §104(c)(2) and it must be explained where the claim 1 required connection of this "frame feature value storing unit" to the "frame feature value generating unit" appears in the disclosure of Wilcox. This is so because the generalized referral to **steps** "S210-S220-S280" of the flow chart of "figure 10" at the bottom of page 3 of the outstanding Action does not serve to indicate what elements are being relied upon as to these claimed elements and their claimed connection.

Further, even though figure 8 discloses a "storage device 206" that "stores data related to the VSHMM" as disclosed at col. 10, line 8, element 208 that is connected to element 206 is "a video source that inputs digitized videos" (col. 10, line 7), not anything that can be equated to the claim 1 "frame feature value generating unit." Furthermore, the relied on feature extractor 211 is disclosed to be an apparent software module associated with the computer 202. This extractor module 211 "determines feature values for all features selected for the model" and then apparently extracts them before supplying the video without extracted features to processing module 212 that "is used to process the digitized video that has had its features extracted," see col. 10, lines 15-19. This extractor 211 is, thus, not seen to be taught by Wilcox to perform as the claim 1 "frame feature value generating unit" that must generate "a frame feature value which is numerical information **representing quantity of a feature contained in a frame of said plurality of frames of image data using the calculated statistics**."

In order to establish that a reference anticipates a claim under 35 U.S.C. §102, it must be shown that the reference shows the identical invention "in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As the Wilcox reference does not do this, outstanding rejection is clearly improper and should be withdrawn as to independent claim 1 and dependent claim 27.

CONCLUSION

Should there be any outstanding matters that need to be resolved in the present Application, the Examiner is respectfully requested to contact Raymond F. Cardillo, Jr., Reg. No. 40,440 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: June 3, 2009

Respectfully submitted,

By _____

Charles Gorenstein
Registration No.: 29,271
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant